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Attorneys for Plaintiff
DOMINIC CONCETTI, through his Guardian Ad
Litem, SHARON FRASER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DOMINIC CONCETTI, through his
Guardian Ad Litem, SHARON FRASER,

Plaintiff,

v.

IMPAC FUNDING CORPORATION, a
California corporation, dba IMPAC;
UNIVERSAL MORTGAGE AND
SALES, INC., a California corporation;
RAYMOND FLORES, an individual; and
ERIK S. GONZALES, an individual,

Defendants.

Case No. CV 07-05410 JW

**STIPULATED PROTECTIVE ORDER
AND ADDENDUM TO PROTECTIVE ORDER**

(MODIFIED BY THE COURT)

Each party recognizes that some of the information that will be produced in this action
will include information held as confidential or proprietary financial, medical, personal,

1 commercial, business, or trade-secret information. To preserve the confidential or proprietary
2 status of such information, each party, through their respective outside counsel of record, agrees
3 as follows, subject to the approval of the Court.

4 1. For purposes of this Stipulated Protective Order, which governs all discovery
5 produced in this action, the party (including any third party or non party) responding to discovery
6 shall be referred to as the "Disclosing Party"; the Disclosing Party's outside counsel of record
7 shall be referred to as "Disclosing Counsel"; all parties receiving the discovery produced by the
8 Disclosing Party are collectively referred to as the "Discovering Party"; and the Discovering
9 Party's outside counsel of record shall be referred to as "Discovering Counsel."

10 2. The term "Confidential" information shall apply to a party's confidential and
11 nonpublic information, the disclosure of which the Disclosing Party contends could cause harm to
12 the Disclosing Party or provide improper advantage to others, and that is not otherwise marked or
13 designated by the Disclosing Party as "Highly Confidential." (See **Addendum to Protective Order**).
14 ^

15 3. The term "Highly Confidential" shall apply to a party's highly confidential and
16 proprietary information (including, without limitation, medical, personal, business, commercial,
17 competitive, financial, marketing, sales, and technical information) that the Disclosing Party
18 reasonably and in good faith believes is so highly sensitive that its disclosure to persons other
19 than those specified herein in Paragraph 9(b) could reasonably be expected to result in injury to
20 the Disclosing Party. The term "Highly Confidential" may include, but is not limited to, (1)
21 medical records, (2) business/strategic plans, (3) non-public marketing information including
22 future marketing plans, (4) detailed sales and financial data that includes cost and profit
23 information, (5) customer lists, and (6) other information of business, commercial, competitive,
24 financial, marketing, sales, or technical significance comparable to the items listed in this
25 paragraph. (See **Addendum to Protective Order**).
26 ^

27 4. Absent a specific order by this Court, all materials designated "Confidential" or
28 "Highly Confidential" shall be used solely for the purposes of this litigation, and for no other
purpose whatsoever.

1 5. Documents, testimony, and other materials containing “Confidential” or “Highly
2 Confidential” information may be designated in the following manner:

- 3 a. The Disclosing Party may designate documents and other materials as
4 “Confidential” or “Highly Confidential” at the time of their production, by
5 labeling the documents (including each page of multi-page documents) or
6 other material with the legend “Confidential” or “Highly Confidential”. In
7 the absence of such designation at the time of production, the documents
8 and other materials produced shall be deemed non-confidential, subject to
9 paragraph 19 below. All documents and other materials made available for
10 inspection shall be treated as “Highly Confidential” until copied and/or
11 produced, after which time such items shall be treated in accordance with
12 the legend, if any, placed thereon. The parties agree that any documents
13 and other materials produced before the entry of this Stipulated Protective
14 Order shall be deemed governed by this Stipulated Protective Order until it
15 is entered by the Court.
- 16 b. Deposition testimony may be orally designated as “Confidential” or
17 “Highly Confidential” during the deposition. Alternatively, at any time up
18 to 30 calendar days after the deposition, the testimony may be designated
19 as “Confidential” or “Highly Confidential” as long as all other parties to
20 this litigation are informed in writing by the Disclosing Party. If
21 deposition testimony was not designated during the deposition, the
22 testimony shall be deemed “Highly Confidential” until the expiration of the
23 30 day period. If no oral designation was made at the deposition and no
24 written designation was made within the 30 day period, then the transcript
25 and testimony shall be deemed non-confidential.
- 26 c. Testimony or information given at a conference, hearing, or trial may be
27 orally designated as “Confidential” or “Highly Confidential” during the
28

1 conference, hearing, or trial, subject to acceptance of that designation by
2 the Court.

3 6. The Designating Party shall have the right to exclude from a deposition – before
4 the taking of testimony which the Designating Party designates “Confidential” or “Highly
5 Confidential” and subject to this Stipulated Protective Order – all persons not qualified to receive
6 such information. The failure of such persons to leave a deposition whenever such a request is
7 made under this paragraph shall justify counsel to instruct the witness that he or she shall not
8 answer any question that the counsel has a reasonable belief would disclose “Confidential” or
9 “Highly Confidential” information.

10 7. If the Disclosing Party is a third party or non party to this case, Discovering
11 Counsel shall provide the third party or non party with a copy of this Stipulated Protective Order
12 at the time discovery is requested, and Discovering Counsel shall ensure that copies of any
13 documents or other materials produced by the third party or non party are promptly provided to
14 outside counsel of record for all parties in this case.

15 8. As to discovery designated “Confidential”:

16 a. The Disclosing Party shall provide such discovery to outside counsel of
17 record for each other party in the case.

Unless otherwise ordered by the court,

18 b. The Discovering Counsel shall neither disclose nor reveal such discovery
19 in whole or in part to any other person or entity except for:

20 (i) Discovering Counsel, their employees, and independent contractors
21 employed for the purposes of handling and reproducing documents
22 in connection with this action;

23 (ii) stenographic or video personnel who record or transcribe any
24 proceedings in this litigation;

25 (iii) independent consultants, experts, or translators retained by any of
26 the parties to this litigation and their respective employees, staff, or
27 other assistants working under their supervision, subject to
28 paragraphs 10 and 11 below;

- (iv) any author, or past or present authorized recipient, of the document;
 - (v) the Court and its employees, any juror, or any other entity or person authorized by this Court or required by law; and
 - (vi) individuals and organizations that provide graphics, jury consulting, or any related or similar services to counsel as part of discovery or preparation and trial of this action, subject to paragraph 13, below.
 - c. In no event shall "Confidential" information be stored at any business premises of the parties to this case unless such information is stored in a secured area and accessible only to persons eligible to review such information (e.g. locked cabinet or locked office).
 - e. "Confidential" information produced by any defendant shall not be disclosed to any of the individuals identified pursuant to paragraph 8(b)(iv) for any other defendant.
9. As to discovery designated "Highly Confidential":
 - a. The Disclosing Party shall provide such discovery to outside counsel of record for each other party in the case;
 - b. The Discovering Counsel shall neither disclose nor reveal such discovery in whole or in part to any other person or entity except for:
 - (i) Discovering Counsel, their employees, and independent contractors employed for the purposes of handling and reproducing documents in connection with this action;
 - (ii) stenographic or video personnel who record or transcribe any proceedings in this litigation;
 - (iii) independent consultants, experts, or translators retained by any of the parties to this litigation and their respective employees, staff, or other assistants working under their supervision, subject to paragraphs 10 and 11 below;
 - (iv) any author, or past or present authorized recipient, of the document;

- (v) the Court and its employees, any juror, or any other entity or person authorized by this Court or required by law;
- (vi) individuals and organizations that provide graphics, jury consulting, or any related or similar services to counsel as part of discovery or preparation and trial of this action, subject to paragraph 13, below; and
- (vii) any other individuals, upon agreement of the parties or upon motion of a party and approval by the Court.

10. Before disclosing any "Confidential" or "Highly Confidential" information to any independent consultant, expert, or translator referred to in paragraphs 8(b)(iii) and 9(b)(iii) above, Discovering Counsel shall:

- a. provide a copy of this Stipulated Protective Order to each such consultant, expert, or translator;
- b. obtain from the consultant, expert, or translator a fully executed undertaking in the form attached hereto as Exhibit A; and
- c. identify each such consultant, expert, or translator to whom disclosure is proposed by providing to Disclosing Counsel, via email or facsimile, a copy of each such consultant's, expert's, or translator's executed undertaking, along with current resume for each such consultant, expert, or translator. The consultant's, expert's, or translator's resume must identify all employers and clients for whom the consultant, expert, or translator has worked in the last four years, any litigation matters in which the consultant, expert, or translator has testified, either by way of expert report, deposition, or testimony at a hearing or trial, over the last four years, and any work performed for any of the parties to this case at any time.

Discovering Counsel shall not disclose "Confidential" or "Highly Confidential" information to any independent consultant, expert, or translator for a period of seven court days from the date on which it provides to Disclosing Counsel the items specified in paragraph 10(c) above. If, within this period, Disclosing Counsel does not object, in writing, to the proposed disclosure to the consultant, expert, or translator identified pursuant to paragraph 10(c) above,

1 then Discovering Counsel shall be permitted to disclose "Confidential" or "Highly Confidential"
 2 information to that consultant, expert, or translator. If there is an objection, and the parties are
 3 unable to resolve the issue, Disclosing Counsel may, within seven court days after making the
 4 objection, move the Court for an Order preventing such disclosure. If an objection is made, no
 5 disclosure of "Confidential" or "Highly Confidential" information shall be made to the
 6 independent consultant, expert, or translator until after the Court decides the issue, it is resolved
 7 by agreement of the parties, or Disclosing Counsel fails to move the Court for an Order

8 **On any such motion, the party opposing disclosure shall bear the burden of proving that the risk**
 9 **preventing the disclosure within the prescribed time period, ^ of harm that disclosure would entail**
 10 **(under safeguards proposed) outweighs the receiving party's need to disclose the materials to its expert.**

11 11. Before disclosing any "Confidential" or "Highly Confidential" information to any
 12 of the individuals or organizations identified in paragraphs 8(b)(vi) and 9(b)(vi) above,
 13 Discovering Counsel shall obtain an executed undertaking in the form attached as Exhibit A from
 14 each such individual and organization. Discovering Counsel shall maintain a copy of the
 15 undertaking(s) for the individuals and organizations in 8(b)(vi) and 9(b)(iv) until termination of
 16 the action, but need not provide copies or disclose those individuals and organizations to the other
 17 parties. A single undertaking executed by a representative of an organization is sufficient for the
 18 entire organization.

19 12. The provisions of this Stipulated Protective Order shall in no way restrict any of
 20 the defendants from voluntarily sharing their own "Confidential" or "Highly Confidential"
 21 information with each other.

22 13. In the event of any dispute about the designation of a document, testimony, or
 23 other material, the parties shall confer and try to resolve their differences. If the parties are
 24 unable to resolve this issue, the party seeking redesignation may move the Court for an Order
 25 redesignating the document, testimony, or other material. **The burden of persuasion on any such**
 26 **motion shall be on the Disclosing Party to justify the confidentiality designation given.**

27 14. Any document to be filed with the Court that contains any "Confidential" or
 28 "Highly Confidential" information shall be filed **in compliance with Civil Local Rule 79-5.**
~~under seal in a sealed envelope prominently~~
~~labeled as follows:~~

~~"Confidential/Highly Confidential"==~~

~~This envelope/container contains documents, materials, or tangible things filed in this action by [name of party] pursuant to the Protective Order dated _____, 2008, and is not to be opened nor the contents thereof displayed or revealed except to counsel of record in this action and the Court, unless Court Order or Stipulation signed by counsel for the producing party provides otherwise.~~

15. The restrictions of this Stipulated Protective Order shall not apply to any discovery which the Discovering Party can establish (i) was already known to it at the time of disclosure, (ii) has been, or became, a matter of public knowledge through no act of the Discovering Party, or (iii) has been published before, or became published after, disclosure through no act of the Discovering Party.

16. Nothing herein is intended in any way to restrict the ability of Discovering Counsel to use "Confidential" or "Highly Confidential" material in examining or cross-examining any employee, former employee, agent, expert, or consultant of the Disclosing Party, or any person who authored, received, or is a named recipient of the "Confidential" or "Highly Confidential" material.

17. In the event that any "Confidential" or "Highly Confidential" material is used in any Court proceeding in this action, it shall not necessarily lose its "Confidential" or "Highly Confidential" status through such use, and the party using such material shall take all steps reasonably available to protect its confidentiality during such use.

18. "Confidential" or "Highly Confidential" information, or the substance or content thereof, including any notes, memoranda, or other similar documents relating thereto, shall not be disclosed, either in writing or orally, to anyone other than persons permitted to have access to such information under this Stipulated Protective Order. Nothing herein, however, is intended to prohibit or proscribe the ability of Discovering Counsel from providing the client with informed and meaningful advice solely with respect to this action or to prevent counsel from aggregating or summarizing such information for its client so long as it does not reveal or disclose "Confidential" or "Highly Confidential" information to those unauthorized to have access to such information under this Order.

1 19. Nothing herein shall restrict a qualified recipient from making working copies,
2 abstracts, digests, or analyses of "Confidential" or "Highly Confidential" information for use in
3 connection with this litigation, and such working copies, abstracts, digests, and analyses shall be
4 deemed to have the same level of protection under the terms of this Stipulated Protective Order.
5 Further, nothing herein shall restrict a qualified recipient from converting or translating such
6 information into machine-readable form for incorporation into a data retrieval system used in
7 connection with this litigation, provided that access to such information, in whatever form stored
8 or reproduced, shall be limited to qualified recipients.

9 20. If discovery calls for the production of information subject to a confidentiality or
10 nondisclosure agreement between the Disclosing Party and a third party or non party, the
11 Disclosing Party shall give notice within 14 calendar days to the third party or non party that such
12 information is subject to discovery in this litigation, and shall provide the third party or non party
13 with a copy of this Stipulated Protective Order. The Disclosing Party shall advise the
14 Discovering Party that such notice has been given within seven calendar days of giving such
15 notice. If the third party or non party either does not respond or refuses to consent to disclosure
16 of the requested information, the burden shall be on the Discovering Party to seek relief from the
17 appropriate court, if it so desires. **The burden of persuasion in any such motion before this court
18 shall be on the party or non-party opposing disclosure or discovery.**

19 21. If "Confidential" or "Highly Confidential" material produced in accordance with
20 this Order is disclosed to any person other than in the manner authorized by this Order, the party
21 responsible for the disclosure shall immediately bring all pertinent facts related to such disclosure
22 to the attention of the Disclosing Counsel and, without prejudice to other rights and remedies of
23 the Disclosing Party, shall make all reasonable efforts to retrieve the material and prevent any
24 further disclosure by it or by the person(s) who received such material.

25 22. The inadvertent failure to designate documents or other material as "Confidential"
26 or "Highly Confidential" before or at the time of disclosure shall not operate as a waiver of the
27 Disclosing Party's right to designate said documents or other material as "Confidential" or
28 "Highly Confidential". In the event that such documents or other material are designated
 "Confidential" or "Highly Confidential" after disclosure, then the Disclosing Party shall

1 promptly, after learning of the failure to designate, notify the Discovering Party in writing of the
2 missing designation. The Disclosing Party shall provide properly marked replacement documents
3 or other material to the Discovering Party within ten court days after the notice. Within ten court
4 days of receiving properly marked replacements, the Discovering Party shall confirm in writing
5 that the unmarked documents or other material were destroyed, or return the previously unmarked
6 documents or other material to the Disclosing Party.

7 23. If the Disclosing Party inadvertently discloses information that is protected by
8 attorney-client privilege, the work-product doctrine, or any applicable privilege, the Disclosing
9 Party shall promptly, upon discovery of the disclosure, notify in writing the Discovering Party of
10 the inadvertent production, and request that the item(s) be returned. If that request is made, no
11 one shall thereafter assert that the inadvertent disclosure waived any privilege or immunity, but a
12 party may continue to seek the production of the discovery on grounds other than waiver as a
13 result of its inadvertent disclosure in this case. After being notified, the Discovering Party must
14 promptly return, sequester, or destroy the specified information and any copies it has and may not
15 use or disclose the information until the claim is resolved. The Discovering Party may, within 15
16 **in accordance with Civil Local Rule 79-5** calendar days of the privilege assertion, present the information to the Court under seal for a
17 determination of the claim. If the Discovering Party disclosed the information before being
18 notified, it must take reasonable steps to retrieve it. The Disclosing Party must preserve the
19 information until the claim is resolved. If the Discovering Party elects not to file a motion with
20 the Court within 15 calendar days, it shall return or destroy the inadvertently produced
21 information, and all copies and derivations thereof, within that 15 day period. If the Discovering
22 Party does file a motion with the Court challenging the assertion of privilege, and the Court
23 upholds the privilege, the Discovering Party shall return or destroy the inadvertently produced
24 information, and all copies and derivations thereof, within five court days of the Court's order.
25 Where privileged information is to be destroyed by the Discovering Party, the Discovering Party
26 shall confirm in writing that the inadvertently produced information was destroyed, or return it to
27 the Disclosing Party, and such information shall not be used for any purpose in the litigation.
28

1 24. In the event that any party or any other individual authorized under this Protective
2 Order to receive "Confidential" or "Highly Confidential" information is served with a subpoena
3 or other judicial process demanding the production or disclosure of any materials designated
4 "Confidential" or "Highly Confidential," such party or individual shall provide the Disclosing
5 Party with a copy of such subpoena or other judicial process within five (5) court days following
6 receipt thereof, so that the Disclosing Party may have an opportunity to appear and be heard on
7 whether that information need be disclosed.

8 25. Unless counsel agrees otherwise in writing, within thirty days of the conclusion of
9 this case (i.e. within thirty days after entry of a final judgment or decision from which no further
10 appeal may be taken), with the exception noted below, each party's outside counsel of record
11 shall return to the Disclosing Counsel all documents (and copies thereof) which were designated
12 by the Disclosing Party as "Confidential" or "Highly Confidential" or destroy same, including all
13 documents or copies provided by a Discovering Party to any other person. However, outside
14 counsel of record for each of the parties may retain one archival copy ("permitted archival copy")
15 of correspondence between counsel in this case, Court transcripts, Court exhibits, deposition
16 transcripts, deposition exhibits, discovery requests and responses, filings with the Court and
17 pleadings, and exhibits to those filings and pleadings, even though such papers may contain
18 "Confidential" or "Highly Confidential" information. In sum, the parties are not permitted to
19 otherwise retain production documents designated by the Disclosing Party as "Confidential" or
20 "Highly Confidential" as part of the permitted archival copy. At the conclusion of this thirty day
21 period, each party's outside counsel of record shall certify in writing to the Disclosing Counsel
22 that to his or her knowledge and belief, with the exception of the permitted archival copy, the
23 party has either returned or destroyed all "Confidential" or "Highly Confidential" information in
24 accordance with this Stipulated Protective Order.

25 26. The provisions of this Stipulated Protective Order limiting the disclosure of
26 "Confidential" or "Highly Confidential" information shall survive the termination of this action.

27 27. Nothing in this Stipulated Protective Order shall preclude any party hereto from
28 seeking relief from, or modifications to, this Stipulated Protective Order.

 28. For a period of six months after the final termination of this action, this court
shall retain jurisdiction to enforce the terms of this order.

CASE NO. CV-07-05410 JW

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Counsel for Plaintiff Dominic Concetti: FAIR HOUSING LAW PROJECT

By: /s/ Jessica L. Fry
Jessica L. Fry
Attorneys for Plaintiff

MCDERMOTT WILL & EMERY

By: /s/ Steven L. Walker
Steven L. Walker
Attorneys for Plaintiff

Counsel for Defendant Impac: WOLFE & WYMAN LLP

By: /s/ Eric Thomas Lamhofer
Eric Thomas Lamhofer
Attorneys for Defendant,
IMPAC FUNDING CORPORATION

Counsel for Defendant Flores: LAW OFFICE OF CHARLES M. STANDARD

By: /s/ Charles M. Standard
Charles M. Standard
Attorneys for Defendant,
RAYMOND FLORES

This the 29th day of May, 2008.

**(AS MODIFIED BY THE COURT),
PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: July 15, 2008

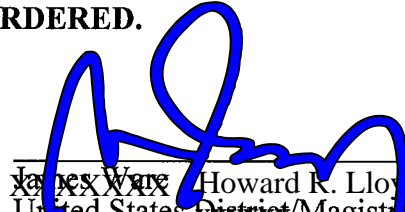

James Ware Howard R. Lloyd
United States District Magistrate Judge

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DOMINIC CONCETTI, through his
Guardian Ad Litem, SHARON FRASER,

Plaintiff,

v.

IMPAC FUNDING CORPORATION, a
California corporation, dba IMPAC;
UNIVERSAL MORTGAGE AND
SALES, INC., a California corporation;
RAYMOND FLORES, an individual; and
ERIK S. GONZALES, an individual,

Defendants.

Case No. C07-05410 JW

STIPULATED PROTECTIVE ORDER

AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER

The undersigned hereby acknowledges that he (or she) has received and read the Stipulated Protective Order entered in the United States District Court for the Northern District of California in connection with the above captioned lawsuit, and understands its terms and agrees to be bound by each of those terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any confidential information other than in accordance with the Stipulated Protective Order. The undersigned further submits to jurisdiction of this Court for purposes of the Stipulated Protective Order in this action.

Dated: _____

By: _____
(signature line)

(type or print name of individual)

(name of employer)

MPK 142478-2.099791.0011

ADDENDUM TO PROTECTIVE ORDER

Concetti v. IMPAC Funding Corp.,
Case No. C07-05410 JW (HRL)

IT IS HEREBY ORDERED as follows:

DESIGNATION OF DOCUMENTS

Each party or non-party that designates information or items for protection under this Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A designating party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass or indiscriminate designations are prohibited. Designations that are clearly shown to be unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the designating party to sanctions.

1 5:07-cv-5410 Notice has been electronically mailed to:

2 Kerstin Arusha kerstina@lawfoundation.org

3 Jessica Lynn Fry jessicaf@lawfoundation.org

4 Elizabeth Catherine Gianola gianola@horanlegal.com

5 Eric Thomas Lamhofer etlamhofer@wolfewyman.com

6 Charles Michael Standard cms1law@sbcglobal.net, cms1law@sbcglobal.net

7 Steven L. Walker swalker@mwe.com, awilkins@mwe.com, mcollins@mwe.com

8 Counsel are responsible for distributing copies of this document to co-counsel who have not
9 registered for e-filing under the court's CM/ECF program.

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